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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
VENKAT, JYOTHSNA A	

ART UNIT	PAPER NUMBER
1619	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/721,106	VIC ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A. VENKAT	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,8-12,14,22,23,30,32 and 35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 5, 8-12, 14 , 22-23 , 30 , 32 and 35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of remarks filed on 12/10/08. Receipt is also acknowledged of English translation of provisional application filed in 60/434,665.

Status of claims

Claims 6-7, 24-29, 31 and 33-34 are withdrawn from consideration as being drawn to non–elected species (election without traverse).

Claims 1-3, 5, 8-12, 14 , 22-23 , 30 , 32 and 35 are pending and currently examine din the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims -3, 5, 8-12, 14, 22-23, 30 , 32 and 35 are rejected under 35 U.S.C. 103(a) as being obvious over U. S. Patent 6,361,767 ('767).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Patent '767 teaches hair treatment method involving fixing active compounds to reactive sites. See the abstract. Patent at col.1, ll 20-55 teaches :

However, since such active principles are not irreversibly fixed but are only fixed by adsorption, they are gradually eliminated by desorption during successive washes using shampoo.

To improve the persistence, studies have primarily been based on treatments which tend to cause a large proportion of the active principles to penetrate into the fibres, either by selecting such active principles which have a particular affinity for the fibres, or by modifying the fibres to increase their porosity and encourage penetration.

Thus coloration of hair keratin fibres is known to be improved by carrying out coloration simultaneously with permanent-waving. Reduction of the disulphide bonds of the keratin at depth permits the colorant to penetrate deeper and thus produces a certain durability of coloration.

This type of treatment, however, is not without serious disadvantages as it causes substantial degradation not only of the surface condition of the keratinous fibres, but also of their intrinsic mechanical properties.

As a result of a great deal of research in this field with a regard to remedying the disadvantages encountered until now, it has surprisingly and unexpectedly been shown that excellent results could be obtained when fixing active compounds to keratinous hair fibres without them suffering detrimental degradation. This has been achieved by limiting reactive site formation to only the surface of the keratinous hair fibres using a reducing agent employed under conditions and in proportions such that reactive sites are only generated at the periphery of the surface of the keratinous fibres.

It has actually been shown that the creation of reactive sites only on the surface is sufficient, and that they are remarkably reactive, to result in good fixing of a variety of active compounds by means of covalent bonds, without the original mechanical properties of the hair being substantially modified.

Patent at col.2, ll 1-8 teaches:

> In accordance with the invention, the treatment method can be carried out either in two separate steps, namely reducing the disulphide bonds of the keratin in a first step, and fixing the active compound by covalent bonds in a second step, or in a single step consisting in simultaneously reducing the disulphide bonds of the keratin and fixing the active compound.

This patent teaches the treatment method in two steps.

Patent at col.7, ll 10-20 teaches :

> Clearly, these different parameters concerning the concentration, pH, temperature and contact time are inter-dependent and clearly, due consideration in this respect should be given. - Thus, for example, an increase in the concentration or a rise in temperature will result in a substantial reduction in the contact time.
>
> When the treatment method of the invention is carried out in two steps, after reducing the disulphide bonds of the keratin in the keratinous fibres, they can be rinsed with water before fixing the active compound.

Patent at col.7, ll 27-30 teaches :

> When the active compounds which are to be fixed do not possess such functions, these are then first introduced into the active compound using known methods. The term "reactive function" means a known reactive group which permits the formation of a covalent bond (by reaction with nucleophilic functions, in this instance sulphydryl functions —SH) and which thus comprise one or more nucleofuge(s) X or one or more activated carbon(s) or bond(s). The following groups are the usual nucleofuges:

Patent at col.7, ll 40-45 describes polyalkyleneimines as a nuclofuge and this is the same elected species claimed in the instant application. Patent at col.8, ll 50-59 describes claimed dye derivatives. Patent under example 1 and example 8 teaches fixing colorant on locks of hair and at

col.11 under method 8 teaches reducing hair locks with polyethyleneimine and at col.12, ll 27-40 discloses colorant graft step using dye derivatives and using polyethyleneimine .

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to treat the hair using polyethyleneimine and dye derivatives taught by patent '767 with the reasonable expectation of success that good fixing of dyes by chemical bond takes place on the keratin substrate and the keratin fibers not suffering detrimental degradation. This is prima facie case of obviousness.

Response to Arguments

Applicant's arguments filed 12/10/08 have been fully considered but they are not persuasive.

Applicants' argue that patent '767 teaches three-step process which is 1)reducing the sulfide bonds of the keratin fibers, 2) application of the nucleofuge and 3) application of the active compound where as the present application does not recite a step involving the reduction of the sulfide bond and there is nothing in patent '767 which teaches or suggests to the skilled artisan that the treatment method can be carried out without first performing the step of reducing the sulfide bond.

In response to the above argument, even though the claims recite " activate hair by non-reducing activation", the same hair population is treated (emphasis added) using the same polymer (polyethyleneimine of example 8) and applying to the activated hair cosmetically active compound, which is claimed dye(col12, colorant graft step). The expression " comprising " in the claims are inclusive unrecited steps of the patent.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619